

**FINAL REPORT
OF THE
ENVIRONMENTAL QUALITY
SERVICE COUNCIL**



**Indiana Legislative Services Agency
200 W. Washington St., Suite 301
Indianapolis, Indiana 46204-2789**

November 2012

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November 2012

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at

<http://www.in.gov/legislative/>.

FINAL REPORT

Environmental Quality Service Council

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Environmental Quality Council (EQSC) is established by IC 13-13-7.

The Legislative Council charged the EQSC with studying the following topic in 2012:

- (1) The powers of solid waste management districts to:
 - (A) Establish and issue permits; and
 - (B) Impose and collect fees that are not specifically authorized by a statute (SEA 131-2012).

II. INTRODUCTION AND REASONS FOR STUDY

In addition to the topic assigned by the Legislative Council, the EQSC also studied other topics that were recommended by the membership of the EQSC. All activities of the EQSC were conducted to discharge their responsibilities under IC 13-13-7-9.

III. SUMMARY OF WORK PROGRAM

The testimony received by the EQSC is summarized below. Additional details concerning the testimony of the witnesses are available in the meeting minutes. The minutes and all exhibits presented to the EQSC can be accessed from the Indiana General Assembly's website at <http://www.in.gov/legislative/>.

The EQSC met four times during the 2012 interim on the following dates and at the following locations.

August 15, 2012	Room 404, Indiana Statehouse	Annual Report to the EQSC from the Indiana Department of Environmental Management (IDEM)
September 12, 2012	Auditorium, Indiana Government Center South Building	Duties of solid waste management districts and brownfield update
October 3, 2012	Room 404, Indiana Statehouse	Recycling incentives and electronic notification of administrative/regulatory hearings by the Air Pollution Control Board
October 30, 2012	Room 404, Indiana Statehouse	Staffing and membership issues related to the Environmental Rules Board, consolidation of oversight of water issues into a single agency, and final report

IV. SUMMARY OF TESTIMONY

First Meeting - August 15, 2012

IDEM's Annual Report

The Commissioner of IDEM, Thomas Easterly, presented IDEM's Annual Report to the EQSC that addressed the following issues: (1) the reductions of IDEM permit backlogs; (2) IDEM approval of long-term control plans for combined sewer overflows; (3) water anti-degradation; (4) the Blue-Green Algae Initiative; (5) mercury concentration in fish tissue; (6) U.S. EPA's Cross State Air Pollution Rule; (7) U.S. EPA's Mercury Air Toxics Rule; (8) air quality standards and areas of nonattainment in Indiana; (9) strategies to reduce CO₂ emissions; (10) testing of volatile organic compound emissions from mint distilling; (11) new CFO/CAFO rules; (12) the replacement of the Air Pollution Control Board, the Water Pollution Control Board, and the Solid Waste Management Board with the Environmental Rules Board; and (13) IDEM's goals and challenges, including the development of a plan for seamless implementation of water program responsibilities that are currently carried out by IDEM, the State Department of Health, the Indiana Department of Natural Resources, the Indiana Department of Homeland Security, and the State Department of Agriculture.

Second Meeting - September 12, 2012

Permitting by Solid Waste Management Districts

Ms. Julie Rhodes, Executive Director of the Association of Indiana Solid Waste Management Districts, made a presentation that addressed the following: (1) local control concerning programs and services and funding decisions by solid waste management districts; and (2) permitting and registration of facilities and vehicles by solid waste management districts.

Ms. Jennifer Lawrence, Executive Director of the Boone County Solid Waste Management District, made a presentation that addressed the following: (1) the history and mission of the Boone County Solid Waste Management District; (2) history of permitting clean fill facilities; (3) fees paid by permitted facilities; (4) history of hauler registrations; and (5) recycling and diversion rates.

Mr. Terry Guerin, Chairman, Indiana Chapter of the National Solid Waste Management Association, testified concerning the registration of solid waste haulers by the Boone County Solid Waste Management District. Mr. Guerin suggested that the fundamental role of solid waste management districts should be education.

Mr. Patrick Bennett, Indiana Manufacturers Association, recommended that the legislature review the powers of solid waste management districts (particularly the power to adopt resolutions that have the force of law) and limit their authority as deemed appropriate.

Sen. Gard shared that she and Rep. Wolkins sponsored the solid waste management district legislation in 1990. Sen. Gard expressed the following concerns about permitting and registration activities by solid waste management districts: (1) training for those who monitor compliance; (2) whether district regulations differ from state regulations; (3) possible actions taken when a violation occurs.

Brownfields

Mr. James McGoff, General Counsel, COO and Director of Environmental Programs, Indiana Finance Authority (IFA), made a presentation that addressed the following: (1) overview of the Indiana Brownfields Program; (2) the Trails and Parks Initiative; (3) the Automotive Sector Brownfields Assessment Initiative; (4) Supplemental Environmental Projects; (5) American Recovery and Reinvestment Act funds for Leaking Underground Storage Tank cleanup activities; and (6) the project funding mix of IFA investment, private leveraged funds and public leveraged funds.

Mr. David Valinetz, CEO of Restorical Research, suggested that more funding for brownfield projects could be secured by combining private insurance money with grants and loans.

Third Meeting - October 3, 2012

Recycling Incentives

Carey Hamilton, Indiana Recycling Coalition, made a presentation that addressed the following: (1) the economic and environmental benefits of recycling; (2) the connection between recycling and resource conservation; (3) the use of recycled feedstock by Indiana manufacturers; (4) the creation of jobs through increased recycling; and (5) the Recycling Industry Stakeholder Group.

Sally Lambert, Alcoa, made a presentation that addressed the following: (1) methods to incentivize recycling, including container deposit laws ("bottle bills"), disposal bans, pay-as-you-throw programs, and efforts to create recycling access for those who live in multi-family homes; and (2) how access and commitment influence consumer recycling.

Stephen A. Segebarth, Verallia North America, made a presentation that addressed the following: (1) U.S. glass container manufacturing; (2) annual beverage container sales in the U.S.; (3) sustainability and recycled glass; and (4) recycling and recovery of beverage containers.

Electronic Notification of Administrative/Regulatory Hearings by the Air Pollution Control Board

Commissioner Thomas Easterly, IDEM, reported that public notice of hearings on the development or amendment of air quality rules and Indiana State Implementation Plans will be provided by electronic notification only beginning December 1, 2012. Commissioner Easterly explained that all other notices will continue to be provided

through paid legal advertisements, and that this decision was coordinated with the U.S. EPA.

Steve Key, Hoosier State Press Association (HSPA), addressed the following: (1) the importance of the Public Notice Advertising, Open Door, and Public Records Laws; and (2) the four elements of effective public notice, which include notice that is provided through an independent third party and is archivable, accessible, and verifiable. He suggested that government websites do not meet these criteria.

Glenn Pratt testified that he did not support providing air rule-making and State Implementation Plan public notices by website only.

Jesse Kharbanda, Hoosier Environmental Council, provided the following concerns regarding the decision to provide air rule-making and State Implementation Plan public notices by website only: (1) concern about the public interest; (2) issue of access; and (3) issue of precedence.

Fourth Meeting - October 30, 2012

Staffing and Membership Issues Related to the New Environmental Rules Board

Tim Maloney, Hoosier Environmental Council, addressed the following: (1) the need for the new members of the Environmental Rules Board to be knowledgeable in the technical policy aspects of air and water pollution and solid waste; (2) the significant control by the Governor over the board's selection of its staff; and (3) the difficulty of finding and compensating qualified individuals to serve as technical secretary and legal counsel to the board.

Dr. Gabriel Filippeli, Professor of Earth Sciences and Director of the Center for Urban Health, IUPUI, expressed concern about possible unintended consequences such as the loss of scientific expertise from consolidating the three boards into the new Environmental Rules Board.

Consolidation of Oversight of Water Issues into a Single Agency

Commissioner Thomas Easterly, IDEM, made a presentation that addressed the following: (1) the Indiana Agriculture Regulatory Structure Task Force recommendations concerning septic systems and the study of combining water-related programs into a Department of Water Management; (2) a draft report of the Sustainable Natural Resources Task Force which recommended that state authority for flood control, drainage, and planning for water availability and distribution be consolidated into one entity; (3) the unclear nature of the current regulatory system for granting water permits; (4) that various responsibilities concerning water are conducted by IDEM, the State Department of Health, the Indiana Department of Natural Resources, the State Department of Agriculture, the Indiana Department of Homeland Security, the U.S.

Army Corp of Engineers, and the U.S. EPA; and (5) the consolidation of water issues needs more study before recommendation of statutory changes.

Justin Schneider, Indiana Farm Bureau, expressed the importance of helping citizens understand the regulatory environment currently in place so that they may comply with the regulations. Mr. Schneider encouraged the review of existing regulatory programs in order to determine if any should be merged within an existing agency or a new entity, as well as the improvement of communication within and between agencies.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The EQSC made the following recommendations:

The EQSC recommends that legislation be enacted to allow the Environmental Rules Board established under IC 13-13-8 to hire a full-time technical secretary and support staff who will be employees of a state agency or state entity other than the Indiana Department of Environmental Management.

This recommendation was approved by 8 members of the EQSC by a show of hands.

The EQSC recommends that legislation be enacted to amend IC 13-21-3-12 to specify that a solid waste management district does not have the ability to adopt a resolution that has the force of law to require motor vehicles that haul solid waste within the district to obtain a permit from or register with the district.

This recommendation was approved by 8 members of the EQSC by a show of hands.

The EQSC recommends that the Indiana General Assembly increase funding for brownfield remediation programs and that the state of Indiana investigate the use of insurance archaeology services to search for historical insurance policies as an additional source of funding for brownfield remediation programs.

This recommendation was approved by 8 members of the EQSC by a show of hands.

The EQSC approved the Final Report for 2012 that contains a summary of the EQSC's 2012 work program and a list of recommendations made by the EQSC, subject to distribution to and review by the members.

WITNESS LIST

Patrick Bennett, Indiana Manufacturers Association

Commissioner Thomas Easterly, Indiana Department of Environmental Management

Dr. Gabriel Filippeli, IUPUI Center for Urban Health

Senator Beverly Gard

Terry Guerin, Indiana Chapter of the National Solid Waste Management Association

Carey Hamilton, Indiana Recycling Coalition

Steve Key, Hoosier State Press Association

Jesse Kharbanda, Hoosier Environmental Council

Sally Lambert, Alcoa

Jennifer Lawrence, Boone County Solid Waste Management District

Tim Maloney, Hoosier Environmental Council

James McGoff, Indiana Finance Authority

Glenn Pratt

Julie Rhodes, Association of Indiana Solid Waste Management Districts

Justin Schneider, Indiana Farm Bureau

Stephen A. Segebarth, Verallia North America

David Valinetz, Restorical Research